THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No : 24167 of 2005

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Dated:11.11.2005

Between:

Mohd.Abdul Samad Khan, S/o Gulam Ghouse Khan,
R/o 8-3-168/1/1, Erragadda, Hyderabad.

..... PETITIONER

AND

Assistant City Planner, Circle No.5, Municipal Corporation of Hyderabad, Khairatabad, Hyderabad, and another.

.....RESPONDENTS

THE HONOURABLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.24167 of 2005

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ORDER:

The petitioner alleges that he is owner of the premises bearing No.8-3-168/1/1, Erragadda, Hyderabad. The first respondent sent a communication on 25.06.2005. The same is self-explanatory and reads as under.

> It is to inform you that the M.C.H has proposed to widen the existing road from S.R.Nagar Junction to Erragadda Junction to 150'-00' wide road to ensure free flow of traffic.
>
> In the said widening programme your premises No.8-3-168 is getting affected to a depth of 16'.66" to 10'.00" admeasuring 69.44 sq.yards/Sq.mts.
>
> Therefore, while enclosing the plan of the affected portion, you are requested to extend your co-operation with MCH by exercising your consent to handover advance possession of the area affected in Road Widening to MCH in the public interest.
>
> The M.C.H will arrange to pay the compensation for structural valuation in respect of the affected portion or you will be allowed to avail the concessions

> as prescribed by the Government in G.O.Ms.No.483, MA, dated 24.8.1998 for the re-development of balance area.
>
> Your co-operation in the public interest is earnestly solicited.

Aggrieved by the above communication, the Writ Petition is filed before this Court. A reading of the above communication would show that the Municipal Corporation of Hyderabad (MCH) sought consent of the owner for advance possession in larger public interest. It does not, however, mean that in the event of owner of the property not willing to give consent the respondent MCH would resort to high-handed action. In such case, the MCH has to necessarily resort to provisions of Section 147 of the Hyderabad Municipal Corporation Act, 1955 (for short 'the Act'). In **Srichand Rohra v. Commissioner, Municipal Corporation of Hyderabad** while dealing with similar matter, this Court made the following observations.

> A reading of the said letter does not in any way indicate that there is any truth in the submission made by the learned Counsel for the petitioners. What was sought to by issuing such letter is, a request was made to the landlords to give consent to handover advanced possession in the larger public interest. It was clearly informed that MCH will pay compensation to the effected structures as per the Rules and extent all benefits as per the Rules. If landlord desires to avail the benefits to be extended by the MCH on his own volition the landlord may give consent. If the landlord is not willing the letter nowhere compels one to part with the land for widening the road in which event as rightly contended by the learned Standing Counsel the MCH will have to resort to the provisions of the Land Acquisition Act.

If the petitioner has not given consent, it is always open to MCH to initiate action under Section 147 of the Act and acquire the property of the petitioners. In this case, the petitioner has not given his willingness/consent to cooperate with the MCH for the road widening project. Needless to mention that Corporation has to initiate action under the provisions of LA Act. Till then, the petitioner cannot be deprived of their right to enjoy the property.

The Writ petition with the above observations is accordingly disposed of. No costs.

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(V.V.S.RAO, J)

11.11.2005

Note: Issue C.C by tomorrow.

B/o.

vs